

Food and Consumer Service, USDA

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²U.S. Department of Health, Education, and Welfare, Education Division, (NCES), Digest of Education Statistics, 1976, Table 46, p. 47, Northern Marianas and Trust Territory 1975-76 data from Department of Interior, adjust to include pre-school.

³U.S. Department of Agriculture, Food and Nutrition Service, Annual Report of Meal Service in Schools (Form FNS-47), October 1978.

⁴U.S. Department of Health, Education, and Welfare, *Day Care Centers In the U.S.; A National Profile 1976-77*, Volume 3 of the Final Report of the National Day Care Study, Table 63.

⁵A portion of these funds will be withheld from the States' allocations for use by FCS in administering the Program in nonprofit private schools or institutions.

[44 FR 70451, Dec. 7, 1979]

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

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AUTHORITY: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

SOURCE: 41 FR 32405, Aug. 3, 1976, unless otherwise noted.

§ 235.1 General purpose and scope.

This part announces the policies and prescribes the regulations necessary to carry out the provisions of section 7 of the Child Nutrition Act of 1966, as amended. It prescribes the methods for making payments of funds to State agencies for use for administrative expenses incurred in supervising and giving technical assistance in connection with activities undertaken by them under the National School Lunch Program (7 CFR part 210), the Special Milk Program (7 CFR part 215), the School Breakfast Program (7 CFR part 220), the Child and Adult Care Food Program (7 CFR part 226) and the Food Distribution Program (7 CFR part 250).

(Sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776))

[44 FR 51185, Aug. 31, 1979, as amended by Amdt. 17, 55 FR 1378, Jan. 16, 1990; 60 FR 15461, Mar. 24, 1995]

§ 235.2 Definitions.

For the purpose of this part, the term:

(a) *Act* means the Child Nutrition Act of 1966, as amended.

(b) *CND* means the Child Nutrition Division of the Food and Consumer Service of the U.S. Department of Agriculture.

(c) *Department* means the U.S. Department of Agriculture.

(d) *Distributing agency* means a State agency which enters into an agreement with the Department for the distribution of donated foods pursuant to part 250 of this title.

(e) [Reserved]

(f) *FCS* means the Food and Consumer Service of the U.S. Department of Agriculture.

(g) *FCSRO* means the appropriate Food and Consumer Service Regional Office of the Food and Consumer Service of the U.S. Department of Agriculture.

(h) *Fiscal year* means a period of 12 calendar months beginning October 1, 1976, and October 1 of each calendar year thereafter and ending with September 30 of the following calendar year.

(i) *Institution* means a child or adult care center or a sponsoring organization as defined in part 226 of this chapter.

(j)-(k) [Reserved]

(l) *OIG* means the Office of the Inspector General of the Department.

(m) [Reserved]

(n) *SAE* means federally provided State administrative expense funds for State agencies under this part.

(o) *School* means: (1) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (2) any public or nonprofit private classes of preprimary grade

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when they are conducted in the aforementioned schools; (3) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term “residential child care institutions” includes, but is not limited to: Homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more; or (4) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

(p) *School Food Authority* means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a breakfast or a lunch program therein. The term “School Food Authority” also includes a nonprofit agency or organization to which such governing body has delegated authority to operate the lunch or breakfast program in schools under its jurisdiction, provided the governing body retains the responsibility to comply with breakfast or lunch program regulations.

(q) *Secretary* means the Secretary of Agriculture.

(q-1) *7 CFR part 3015* means the Uniform Federal Assistance Regulations published by the Department to implement Office of Management and Budget Circulars A-21, A-87, A-102, A-110, A-122, and A-128; the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*); and Executive Order 12372.

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NOTE: OMB Circulars, referred to in this definition, are available from the EOP Publications, New Executive Office Building, 726 Jackson Place NW., Room 2200, Washington, DC 20503.

(r) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or the Republic of Palau.

(s) *State agency* means (1) the State educational agency or (2) such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer programs under part 210, 215, 220, 226 or 250 of this title. Unless otherwise indicated, “State agency” shall also mean “distributing agency”, as defined in § 235.2(d), when such agency is receiving funds directly from FCS under this part.

(t) *State educational agency* means, as the State legislature may determine: (1) The chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State department of education.

(Sec. 7, Pub. L. 95–627, 92 Stat. 3621 (42 U.S.C. 1776); sec. 205, Pub. L. 96–499, The Omnibus Reconciliation Act of 1980, 94 Stat. 2599; secs. 807 and 808, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1772, 1784, 1760); Pub. L. 79–396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89–642, 80 Stat. 885–890 (42 U.S.C. 1773); Pub. L. 91–248, 84 Stat. 207 (42 U.S.C. 1759)

[41 FR 32405, Aug. 3, 1976, as amended at 44 FR 48957, Aug. 21, 1979; 44 FR 51185, Aug. 31, 1979; Amdt. 9, 48 FR 19355, Apr. 29, 1983; Amdt. 14, 51 FR 27151, July 30, 1986; 54 FR 2991, Jan. 23, 1989; Amdt. 17, 55 FR 1378, Jan. 16, 1990; 60 FR 15461, Mar. 24, 1995]

§ 235.3 Administration.

(a) Within the Department, FCS shall act on behalf of the Department in the administration of the program for payment to States of State administrative expense funds covered by this part. Within FCS, CND shall be responsible for administration of the program.

(b) Each State agency desiring to receive payments under this part shall enter into a written agreement with the Department. Each agreement shall cover the operation of the Program during the period specified therein and

may be extended at the option of the Department.

(Sec. 14, Pub. L. 95-166, 91 Stat. 1338 (42 U.S.C. 1776); sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776))

[41 FR 32405, Aug. 3, 1976, as amended at 44 FR 48957, Aug. 21, 1979; Amdt. 14, 51 FR 27151, July 30, 1986]

§ 235.4 Allocation of funds to States.

(a) *Nondiscretionary SAE Funds.* For each fiscal year, FCS shall allocate the following:

(1) To each State which administers the National School Lunch, School Breakfast or Special Milk Programs an amount equal to one (1) percent of the funds expended by such State during the second preceding fiscal year under sections 4 and 11 of the National School Lunch Act, as amended, and sections 3, 4 and 17A of the Child Nutrition Act of 1966, as amended. However, the total amount allocated to any State under this paragraph shall not be less than \$100,000 or the amount allocated to the State in the fiscal year ending September 30, 1981, whichever is greater.

(2) To each State which administers the Child and Adult Care Food Program an amount equal to the sum of: Twenty percent of the first \$50,000; ten percent of the next \$100,000; five percent of the next \$250,000; and two and one-half percent of any remaining funds expended within the State under section 17 of the National School Lunch Act, as amended, during the second preceding fiscal year. FCS may adjust the amount of any such allocation in accordance with changes in the size of the Child and Adult Care Food Program in a State.

(b) *Discretionary SAE Funds.* For each fiscal year, FCS shall provide the following additional allocations:

(1) Allocate \$30,000 to each State which administers the Child and Adult Care Food Program (7 CFR part 226).

(2) \$30,000 to each State which administers the Food Distribution Program (part 250 of this chapter) in schools and/or institutions which participate in programs under parts 210, 220, 226 of this chapter.

(3) Amounts derived by application of the following four-part formula to each State agency which is allocated funds under paragraph (a) of this section:

(i) One equal share of forty (40) percent of the funds designated by FCS for the reviews conducted under §210.18 or §210.18a of this title.

(ii) The ratio of the number of School Food Authorities participating in the National School Lunch or Commodity School Programs under the jurisdiction of the State agency to such School Food Authorities in all States times twenty (20) percent of the funds designated by FCS for reviews conducted under §210.18 or §210.18a of this title.

(iii) The ratio of the number of free and reduced price meals served in School Food Authorities under the jurisdiction of the State agency during the second preceding fiscal year to the number of free and reduced price meals served in all States in the second preceding fiscal year times twenty (20) percent of the funds designated by FCS for reviews conducted under §210.18 or §210.18a of this title.

(iv) Equal shares of twenty (20) percent of the funds designated by FCS for reviews conducted under §210.18 or §210.18a of this title for each School Food Authority under the jurisdiction of the State agency participating in the National School Lunch or Commodity School Programs which has an enrollment of 40,000 or more; *Provided, however,* That for State agencies with fewer than two School Food Authorities with enrollments of 40,000 or more, an equal share shall be provided to the State agency, for either, or both, of the two largest School Food Authorities which have enrollments of more than 2,000; and *Provided, further,* That State agencies with only one School Food Authority, regardless of size, shall be provided with one equal share. For each fiscal year, the amount of State Administrative Expense Funds designated by FCS for reviews conducted under §210.18 or §210.18a of this title and subject to allocation under this paragraph shall be equal to or greater than the amount designated by FCS for program management improvements for the fiscal year ending September 30, 1980.

(4) Funds which remain after the allocations required in paragraphs (a)(1), (a)(2), (b)(1), (b)(2) and (b)(3) of this section, and after any payments provided for under paragraph (c) of this section,

as determined by the Secretary, to those States which administer the Food Distribution Program (part 250 of this chapter) in schools and/or institutions which participate in programs under parts 210, 220, or 226 of this chapter and to those States which administer part 226 of this chapter. The amount of funds to be allocated to each State for the Food Distribution Program for any fiscal year shall bear the same ratio to the total amount of funds made available for allocation to the State for the Food Distribution Program under this paragraph as the value of USDA donated foods delivered to the State for schools and institutions participating in programs under parts 210, 220 and 226 of this chapter during the second preceding fiscal year bears to the value of USDA donated foods delivered to all the States for such schools and institutions during the second preceding fiscal year. The amount of funds to be allocated to each State which administers the Child and Adult Care Food Program for any fiscal year shall bear the same ratio to the total amount of funds made available for allocation to all such States under this paragraph as the amount of funds allocated to each State under paragraph (a)(2) of this section bears to the amount allocated to all States under that paragraph.

(c) *SAE Funds for the Child and Adult Care Food Program.* If a State elects to have a separate State agency administer the adult care component of the Child and Adult Care Food Program, such separate State agency shall receive a pro rata share of the SAE funds allocated to the State under paragraphs (a)(2), (b)(1), and (b)(4) of this section which is equal to the ratio of funds expended by the State for the adult care component of the Child and Adult Care Food Program during the second preceding fiscal year to the funds expended by the State for the entire Child and Adult Care Food Program during the second preceding fiscal year. The remaining funds shall be allocated to the State agency administering the child care component of the Child and Adult Care Food Program.

(d) *SAE Start-up Cost Assistance for State Administration of Former ROAPs.*

For any State agency which agrees to assume responsibility for the administration of food service programs in nonprofit private schools or child and adult care institutions that were previously administered by FCS, an appropriate adjustment in the administrative funds paid under this part to the State shall be made by FCS not later than the succeeding fiscal year. Such an adjustment shall consist of an amount of start-up cost assistance, negotiated with the State agency, of no less than \$10,000 and not exceeding \$100,000, per State.

(e) *SAE Funding Reduction Upon State Agency Termination of a Food Service Program.* For any State agency which terminates its administration of any food service program for which State administrative expense funds are provided under this part, a reduction in the amount of such funds, negotiated with the State agency, shall be made by FCS.

(f) *SAE Funds for ROAPs.* FCS shall have available to it the applicable amounts provided for in paragraphs (a)(1), (a)(2), and (b)(1) of this section, and part 225 of this title, when it is responsible for the administration of a program or programs within a State.

(g) *Reallocation.* Funds allotted to State agencies under this section shall be subject to the reallocation provisions of § 235.5(d).

(Sec. 14, Pub. L. 95-166, 91 Stat. 1338 (42 U.S.C. 1776); sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776); sec. 7(a), Pub. L. 95-627, 92 Stat. 3622 (42 U.S.C. 1751); Pub. L. 96-499, secs. 201 and 204, 94 Stat. 2599; secs. 805, 812, 814 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1754, 1759a, 1774 and 1776); E.O. 12372 (July 14, 1982, 47 FR 30959); sec. 401(b) Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506(c))

[44 FR 48957, Aug. 21, 1979, as amended at 44 FR 51185, Aug. 31, 1979; 44 FR 53489, Sept. 14, 1979; 45 FR 3566, Jan. 18, 1980; Amdt. 11, 48 FR 27892, June 17, 1983; Amdt. 14, 51 FR 27151, July 30, 1986; Amdt. 15, 51 FR 33862, Sept. 24, 1986; Amdt. 17, 55 FR 1378, Jan. 16, 1990; 56 FR 32949, July 17, 1991; 58 FR 42489, Aug. 10, 1993; 60 FR 15462, Mar. 24, 1995]

§ 235.5 Payments to States.

(a) *Method of payment.* FCS will specify the terms and conditions of the State agency's annual grant of SAE funds in conjunction with the grant

award document and will make funds available for payment by means of a Letter of Credit issued in favor of the State agency. The total amount of a State agency's grant shall be equal to the sum of the amounts allocated to such agency under §235.4 plus or minus any adjustments resulting from the reallocation provisions under paragraph (d) of this section plus any transfers under §235.6(a) and/or §235.6(c) of this part. The amount of SAE funds made available for payment to a State agency in any fiscal year shall be determined by FCS upon approval of the State agency's administrative plan for the fiscal year under paragraph (b) of this section and any amendments to such plan under paragraph (c) of this section. Funds shall not be made available before the State agency's plan or amendment to such plan, as applicable, has been approved by FCS. However, if the plan has not been approved by October 1 of the fiscal year, FCS may advance SAE funds to the State agency, in amounts determined appropriate by FCS, pending approval of the plan.

(b) *Administrative plan.* (1) Based on guidance provided by FCS, each State agency shall submit to FCS, by August 15 of each year, a plan for meeting its administrative responsibilities under the National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program, and Food Distribution Program in schools and child and adult care institutions as applicable, for the upcoming fiscal year. If FCS determines that a State agency is unable to comply with a due date under this subparagraph, it may grant an extension to the State agency.

(2) The State agency's plan shall include its staffing pattern for State level personnel; a budget for the forthcoming fiscal year showing projected amounts (combined SAE and State funds) by cost category; the total amount of budgeted funds to be provided from State sources; the total amount of budgeted funds to be provided under this part; the State agency's estimate of the total SAE carry-over from the current fiscal year; the State agency's estimate of the total amount of budgeted funds (combined SAE and State funds) attributable to

administration of the School Nutrition Programs (National School Lunch, School Breakfast and Special Milk Programs), Child and Adult Care Food Program, and/or Food Distribution Program in schools and child and adult care institutions and to each of the major activity areas of the State agency; and the State agency's estimate of the total Child and Adult Care Food Program two percent audit funds to be used for the forthcoming fiscal year. These activity areas shall be defined and described by the State agency in accordance with guidance issued by FCS and may include such activities as program monitoring, technical assistance, Federal reporting/claims processing, policy implementation, and allocation of foods to recipient agencies.

(3) The basic guidance issued by FCS for preparation of the plan shall provide flexibility in reporting with a minimal amount of reporting burden for State agencies. Such guidance, however, may be expanded for individual State agencies in order to address specific administrative deficiencies which affect compliance with program requirements and which have been identified by FCS through management evaluations, audits or other means. Except in specific instances where determined necessary by FCS, State agencies shall not be required to maintain expenditure records by activity area or program. State agencies shall refer to Office of Management and Budget Circular A-87, Attachment B to establish cost categories. In accordance with Office of Management and Budget Circular A-102, Attachment F, State agency plans for the forthcoming fiscal year shall include not only the projected expenditures of State funds by the State agency (as required above), but also all projected expenditures of State funds by other divisions of the State that will be applied to the State funding requirement under §235.11(a) of this part.

(4) FCS shall approve a State agency's plan, or any amendment to such plan under paragraph (c) of this section, if it determines that the plan or amendment is consistent with program administrative needs and SAE requirements under this part. In approving a State agency's administrative plan or

amendment thereto, FCS shall determine the amount of SAE funds to be made available for payment to the State agency. For any fiscal year, this amount shall be based on the amount of SAE funds justified in the administrative plan as amended, but shall not exceed the total of the following: SAE funds allocated to the State agency under § 235.4 of this part for the fiscal year, any SAE funds carried over from the prior fiscal year grant, any SAE funds transferred to the State agency by another State agency within the State under § 235.6(a) and/or § 235.6(c) of this part and any SAE funds reallocated to the State agency under paragraph (d) of this section.

(5) To the extent practicable, State agencies shall implement their approved plans (as amended). FCS shall monitor State agency implementation of the plans through management evaluations, State agency reports submitted under this part, and through other available means.

(c) *Amendments to the administrative plan.* A State agency may amend its administrative plan at any time during the fiscal year to justify the need for additional SAE funds up to the limit specified in paragraph (b) of this section. Any such amendment shall provide information in a format consistent with that provided in the State agency's plan under paragraph (b) of this section and must be approved by FCS before additional SAE funds are made available for payment to the State agency. In accordance with guidance provided by FCS, a State agency shall also amend its administrative plan to reflect other changes in funding or funding needs. An amendment of this type shall also provide information in a format consistent with that provided in the State agency's plan, but shall only require FCS approval if it results in a significant reduction in funding level or level of planned activity.

(d) *Reallocation of funds.* Annually, between March 1 and May 1 on a date specified by FCS, of each year, each State agency shall submit to FCS a State Administrative Expense Funds Reallocation Report (FCS-525) on the use of SAE funds. At such time, a State agency may release to FCS any funds that have been allocated, reallocated

or transferred to it under this part or may request additional funds in excess of its current grant level. Based on this information or on other available information, FCS shall reallocate, as it determines appropriate, any funds allocated to State agencies in the current fiscal year which will not be expended in the following fiscal year and any funds carried over from the prior fiscal year which will not be expended in the current fiscal year. Reallocated funds shall be made available for payment to a State agency upon approval by FCS of the State agency's plan under this section and an amendment to such plan which covers the reallocated funds. Notwithstanding any other provision of this part, a State agency may, at any time, release to FCS for reallocation any funds that have been allocated, reallocated or transferred to it under this part and are not needed to implement its approved plan under this section.

(e) *Return of funds.* (1) In Fiscal Year 1991, up to 25 per cent of the SAE funds allocated to each State agency under § 235.4 may remain available for obligation and expenditure in the second fiscal year of the grant. In subsequent fiscal years, up to 20 percent may remain available for obligation and expenditure in the second fiscal year. The maximum amount to remain available will be calculated at the time of the formula allocation by multiplying the appropriate percentage by each State agency's formula allocation as provided under § 235.4(a) through (c). At the end of the first fiscal year, the amount subject to the retention limit is determined by subtracting the amount reported by the State agency as Total Federal share of outlays and unliquidated obligations on the fourth quarter Standard Form (SF) 269, Financial Status Report, from the total amount of SAE funds made available for that fiscal year (i.e., the formula allocation adjusted for any transfers or reallocations). However, funds provided under § 235.4(d) are not subject to the retention limit. Any funds in excess of the amount that remains available to each State agency shall be returned to FCS.

(2) At the end of the fiscal year following the fiscal year for which funds were allocated, each State agency shall

return any funds made available which are unexpended.

(3) Return of funds by the State agency shall be made as soon as practicable, but in any event, not later than 30 days following demand by FCS.

[Amdt. 14, 51 FR 27151, July 30, 1986, as amended by Amdt. 17, 55 FR 1378, Jan. 16, 1990; 60 FR 15462, Mar. 24, 1995]

§ 235.6 Use of funds.

(a) Funds allocated under this part and 7 CFR part 225 shall be used for State agency administrative costs incurred in connection with the programs governed by 7 CFR parts 210, 215, 220, 225, 226, and 250 of this title. Except as provided under § 235.6(c), funds allocated under § 235.4, paragraphs (a) and (b) and 7 CFR part 225 shall be used for the program(s) for which allocated, except that the State agency may transfer up to ten percent of the funds allocated for any such program(s) to other such program(s). Subject to the provisions of this paragraph, a State agency may also transfer SAE funds that are not needed to implement its approved plan § 235.5(b) to another State agency within the State that is eligible to receive SAE funds under this part. Up to 25 per cent of funds allocated under § 235.4(a) through (c) for Fiscal Year 1991 and up to 20 per cent of funds allocated in subsequent fiscal years to a State agency may, subject to the provisions of § 235.5 of this part, remain available for obligation and expenditure by such State agency during the following fiscal year.

(a-1) State administrative expense funds paid to any State may be used by State agencies to pay salaries, including employee benefits and travel expenses for administrative and supervisory personnel, for support services, for office equipment, and for staff development, particularly for monitoring and training of food service personnel at the local level in areas such as food purchasing and merchandizing. Such funds shall be used to employ additional personnel, as approved in the applicable State plan to supervise, improve management, and give technical assistance to school food authorities and to institutions in their initiation, expansion, and conduct of any programs for which the funds are made

available. State agencies may also use these funds for their general administrative expenses in connection with any such programs, including travel and related expenses. Additional personnel or part-time personnel hired are expected to meet professional qualifications and to be paid at salary scales of positions of comparable difficulty and responsibility under the State agency. Personnel may be used on a staff year equivalent basis, thus permitting new personnel and existing staff to be cross-utilized for most effective and economical operation under existing and new programs.

(a-2) State Administrative Expense Funds paid to any State agency under § 235.4(b)(3) shall be available for reviews conducted under § 210.18 or § 210.18a of this title activities associated with carrying out actions to ensure adherence to the program performance standards.

(b) State administrative expense funds shall be used consistent with the cost principles and constraints on allowable and unallowable costs and indirect cost rates as prescribed in Office of Management and Budget Circular A-87.

(c) In addition to State Administrative Expense funds made available specifically for food distribution purposes under § 235.4 (b)(2) and (b)(4), State Administrative Expense funds allocated under § 235.4 (a)(1), (a)(2), (b)(1), (b)(3), and (d), and under (b)(4) for the Child and Adult Care Food Program may be used to assist in the administration of the Food Distribution Program (7 CFR part 250) in schools and institutions which participate in programs governed by parts 210, 220, and 226 of this title when such Food Distribution Program is administered within the State agency and may also be used to pay administrative expenses of a distributing agency, when such agency is other than the State agency and is responsible for administering all or part of such Food Distribution Program.

(d) FCS shall allocate, for the purpose of providing grants on an annual basis to public entities and private nonprofit organizations participating in projects under section 18(c) of the National School Lunch Act, not more than \$4,000,000 in each of Fiscal Years

1993 and 1994. Subject to the maximum allocation for such projects for each fiscal year, at the beginning of each of Fiscal Years 1993 and 1994, FCS shall allocate, from funds available under § 235.5(d) that have not otherwise been allocated to States, an amount equal to the estimates by FCS of the funds to be returned under paragraph (a) of this section, but not less than \$1,000,000 in each fiscal year. To the extent that amounts returned to FCS are less than estimated or are insufficient to meet the needs of the projects, FCS may allocate amounts to meet the needs of the projects from funds available under this section that have not been otherwise allocated to States. FCS shall re-allocate any of the excess funds above the minimum level in accordance with § 235.5(d).

(e) Where State Administrative Expense Funds are used to acquire personal property or services the provisions of §§ 235.9 and 235.10 must be observed.

(f) Each State agency shall adequately safeguard all assets and assure that they are used solely for authorized purposes.

(g) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part, whether received directly or indirectly from the Department, shall:

(1) If such funds, assets, or property are of a value of \$100 or more, be fined not more than \$10,000 or imprisoned not more than five years or both; or

(2) If such funds, assets, or property are of a value of less than \$100, be fined not more than \$1,000 or imprisoned not more than one year or both.

(h) Whoever receives, conceals, or retains to his use or gain funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject

to the same penalties provided in paragraph (h) of this section.

(Sec. 14, Pub. L. 95–166, 91 Stat. 1338, 1339, 1340 (42 U.S.C. 1751, 1753, 1759a, 1761, 1766, 1772–1775, 1776, 1786); sec. 7(a), Pub. L. 95–627, 92 Stat. 3621, 3622 (42 U.S.C. 1751, 1776))

[41 FR 32405, Aug. 3, 1976, as amended at 43 FR 37172, Aug. 22, 1978; 44 FR 37901, June 29, 1979; 44 FR 48958, Aug. 21, 1979; 44 FR 51185, Aug. 31, 1979; 45 FR 3566, Jan. 18, 1980; Amdt. 11, 48 FR 27892, June 17, 1983; Amdt. 14, 51 FR 27152, July 30, 1986; 56 FR 32949, July 17, 1991; 60 FR 15462, Mar. 24, 1995; 60 FR 57148, Nov. 14, 1995]

§ 235.7 Records and reports.

(a) Each State agency shall keep records on the expenditure of State administrative expense funds provided under this part and part 225 of this title. Such records shall conform with the applicable State plan for use of State administrative expense funds. The State agency shall make such records available, upon a reasonable request, to FCS, OIG, or the U.S. Comptroller General and shall maintain current accounting records of State administrative expense funds which shall adequately identify fund authorizations, obligations, unobligated balances, assets, liabilities, outlays and income. The records may be kept in their original form or on microfilm, and shall be retained for a period of three years after the date of the submission of the final Financial Status Report, subject to the exceptions noted below:

(1) If audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(2) Records for nonexpendable property acquired with State Administrative Expense Funds shall be retained for three years after its final disposition.

(b) Each State agency shall submit to FCS a quarterly Financial Status Report (SF–269) on the use of State administrative expense funds provided for

each fiscal year under this part. Reports shall be postmarked and/or submitted to FCS no later than 30 days after the end of each quarter of the fiscal year and, in case of funds carried over under § 235.6(a), each quarter of the following fiscal year until all such funds have been obligated and expended. Obligations shall be reported for the fiscal year in which they occur. Each State agency shall submit a final Financial Status Report for each fiscal year's State administrative expense funds. This report shall be postmarked and/or submitted to FCS no later than 30 days after the end of the fiscal year following the fiscal year for which the funds were initially made available. Based on guidance provided by FCS, each State agency shall also use the quarterly SF-269 to report on the use of State funds provided during the fiscal year. Each State agency shall also submit an annual report containing information on School Food Authorities under agreement with the State agency to participate in the National School Lunch or Commodity School programs.

(c) State agencies operating those programs governed by parts 210, 215, 220 and 226 and those State agencies which are distributing agencies eligible for SAE funds shall participate in surveys and studies of programs authorized under the National School Lunch Act, as amended, and the Child Nutrition Act of 1966, as amended, when such studies and surveys are authorized by the Secretary of Agriculture. The aforementioned State agencies shall encourage individual School Food Authorities, child and adult care institutions, and distributing agencies (as applicable) to participate in such studies and surveys. Distribution of State Administrative Expense funds to an individual State agency is contingent upon

that State agency's cooperation in such studies and surveys.

(Sec. 14, Pub. L. 95-166, 91 Stat. 1338 (42 U.S.C. 1776); sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776); 93 Stat. 837, Pub. L. 96-108 (42 U.S.C. 1776); secs. 804, 816, 817 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771, 1773 and 1785); sec. 7(a), Pub. L. 95-627, 92 Stat. 3622, 42 U.S.C. 1751)

[41 FR 32405, Aug. 3, 1976, as amended at 43 FR 37173, Aug. 22, 1978; 44 FR 48958, Aug. 21, 1979; 45 FR 8563, Feb. 8, 1980; Amdt. 9, 48 FR 195, Jan. 4, 1983; Amdt. 11, 48 FR 27892, June 17, 1983; Amdt. 12, 49 FR 18989, May 4, 1984; Amdt. 14, 51 FR 27152, July 30, 1986; Amdt. 17, 55 FR 1378, Jan. 16, 1990; 60 FR 15463, Mar. 24, 1995]

§ 235.8 Management evaluations and audits.

(a) Each State agency shall provide for audits of State agency operations under this part to be made with reasonable frequency, but beginning in fiscal year 1978 once every two years. The audits shall determine the fiscal integrity of financial transactions and reports, and the compliance with applicable laws and regulations and with the administrative requirements set forth in 7 CFR part 3015. Audits may be made by State Auditors General, by State Controllers, or other comparable State audit groups, or by Certified Public Accountants or State licensed public accountants.

(b) Each State agency shall develop a plan for the conduct of such audits which shall (1) provide a description of the State agency in adequate detail to demonstrate the independence of the audit organization, and (2) provide a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(c) While OA shall rely to the fullest extent feasible upon State sponsored audits, it shall, whenever considered necessary, (1) perform on-site test audits, and (2) review audit reports and related working papers of audits performed by or for State agencies.

(d) Use of audit guides available from OA is encouraged. When these guides

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are utilized, OA will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(e) Each State agency shall provide FCS with full opportunity to conduct management evaluations of all operations of the State agency under this part and shall provide OA with full opportunity to conduct audits of all such operations. Each State agency shall make available its records, including records of the receipt and expenditure of funds, upon a reasonable request by FCS, OA, or the U.S. Comptroller General.

(Sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776); secs. 804, 805, 812, 814, 816, 817 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1754, 1756, 1759, 1759a, 1771, 1773, 1774, 1776, and 1785))

[41 FR 32405, Aug. 3, 1976, as amended at 44 FR 51186, Aug. 31, 1979; Amdt. 7, 47 FR 18567, Apr. 30, 1982; Amdt. 9, 48 FR 195, Jan. 4, 1983; 54 FR 2991, Jan. 23, 1989]

§ 235.9 Procurement and property management standards.

(a) *Requirements.* State agencies shall comply with the requirements of the Office of Management and Budget (OMB) Circular A-102 and the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015, subpart S (46 FR 55658) concerning the procurement of supplies, equipment and other services with State Administrative Expense Funds. These requirements are adopted by FCS to ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in OMB Circular A-102 and 7 CFR part 3015 do not relieve the State agency of any contractual responsibilities under its contract. The State agency is the responsible authority, without recourse to FCS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred

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to the local, State or Federal authority that has proper jurisdiction.

(c) *Procurement procedure.* The State agency may use its own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds adhere to the standards set forth in OMB Circular A-102 and 7 CFR part 3015.

(d) *Property acquired with State administrative expense funds.* State Agencies shall comply with the requirements of OMB Circular A-102 and 7 CFR part 3015, subpart R (46 FR 55654) in their utilization and disposition of property acquired in whole or in part with State Administrative Expense Funds.

(Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat. 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[Amdt. 9, 48 FR 19355, Apr. 29, 1983]

§ 235.10 [Reserved]

§ 235.11 Other provisions.

(a) *State funds.* Expenditures of funds from State sources in any fiscal year for the administration of the National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program shall not be less than that expended or obligated in fiscal year 1977. Failure of a State to maintain this level of funding will result in the total withdrawal of SAE funds. State agencies shall follow, as applicable, the provisions of Office of Management and Budget Circular A-102, Attachments F and G and 7 CFR part 3015, subparts G and H in identifying and documenting expenditures of funds from State revenues to meet the State funding requirement of this paragraph.

(b) *Sanctions imposed.* (1) FCS may recover, withhold or cancel payment of up to one hundred (100) percent of the funds payable to a State agency under this part, whenever it is determined by FCS that the State agency has failed to comply with the requirements contained in this part and in parts 210, 215, 220 and 226 of this title and in part 250 of this title as it applies to the operation of the Food Distribution Program in schools and child and adult care institutions.

(2) In addition to the general provisions found in paragraph (b)(1) of this section, FCS may, for any fiscal year, recover, withhold or cancel payment of up to thirty-three and one-third (33⅓) percent of the funds payable to, and to be used by, a State agency under § 235.4(a)(1) and § 235.4(b)(3) for administration of school nutrition programs in FCS determines that a State agency is deficient in one or more of the following:

- (i) Implementing the requirements in § 210.18 or § 210.18a of this title;
- (ii) Conducting the number of reviews required in § 210.18 or § 210.18a of this title within the timeframes specified;
- (iii) Covering the areas of review set forth in the § 210.18 or § 210.18a, carrying out corrective action, and assessing and recovering claims as prescribed in § 210.18, § 210.18a, and § 210.19 of this title;
- (iv) Conducting reviews with sufficient thoroughness to identify violations of the areas of review identified in § 210.18 or § 210.18a of this title; and
- (v) Meeting the reporting deadlines prescribed for the forms (FCS-10 and SF-269) required under § 210.5(d) of this title.

(3) Furthermore, FCS may for any fiscal year, recover, withhold or cancel payment of up to thirty-three and one-third (33⅓) percent of the funds payable to, and to be used by, a State agency under § 235.4(a)(2), § 235.4(b)(1) and § 235.4(b)(4) for administration of the Child and Adult Care Food Program if FCS determines that a State agency is deficient in meeting the reporting deadlines prescribed for the forms (FCS-44 and SF-269) required under § 226.7(d) of this title.

(4) In establishing the amounts of funds to be recovered, withheld or cancelled under paragraph (b)(2) and (b)(3) of this section, FCS shall determine the current or projected rate of funds usage by the State agency for all funds subject to sanction, and after considering the severity and longevity of the cumulative deficiencies, shall apply an appropriate sanction percentage to the amount so determined. During the fiscal year under sanction, a State agency may not use funds not included in the determination of funds usage to replace sanctioned funds. The maximum sanc-

tion percentage that may be imposed against a State agency for failure within one or more of the five deficiency areas specified in paragraph (b)(2) of this section for any fiscal year shall be thirty-three and one-third (33⅓) percent of the funds payable under § 235.4(a)(1) and § 235.4(b)(3) for administration of school nutrition programs for such fiscal year.

(5) Before carrying out any sanction against a State agency under this section, the following procedures shall be implemented:

(i) FCS shall notify the Chief State School Officer or equivalent of the deficiencies found and of its intention to impose sanctions unless an acceptable corrective action plan is submitted and approved by FCS within 60 calendar days.

(ii) The State agency shall develop a corrective action plan with specific timeframes to correct the deficiencies and/or prevent their future recurrence. The plan will include dates by which the State agency will accomplish such corrective action.

(iii) FCS shall review the corrective action plan. If it is acceptable, FCS shall issue a letter to the Chief State School Officer or equivalent approving the corrective action plan, and detailing the technical assistance that is available to the State agency to correct the deficiencies. The letter shall advise the Chief State School Officer or equivalent of the specific sanctions to be imposed if the corrective action plan is not implemented within timeframes set forth in the approved plan.

(iv) Upon advice from the State agency that corrective action has been taken, FCS shall assess such action and, if necessary, shall perform a follow-up review to determine if the noted deficiencies have been corrected. FCS shall then advise the State agency if the actions taken are in compliance with the corrective action plan or if additional corrective action is needed.

(v) If an acceptable corrective action plan is not submitted and approved within 60 calendar days, or if corrective action is not completed within the time limits established in the corrective action plan, FCS may impose a sanction by assessing a claim against the State agency or taking action in

accordance with 7 CFR part 3015, subpart L. FCS shall notify the Chief State School Officer or equivalent of any such action.

(vi) If, subsequent to the imposition of any sanction, FCS determines that the noted deficiencies have been resolved and that the programs for which SAE funds were made available are being operated in an acceptable manner, FCS may return to the State agency or restore to the State agency's Letter of Credit (LOC) part or all of any sanctioned SAE funds.

(6) In carrying out sanctions under this part for any fiscal year, FCS may reduce the amount of allocated SAE funds payable to a State agency in whole or in part during such fiscal year and during following fiscal years if necessary.

(7) Any State agency which has a sanction imposed against it in accordance with this paragraph shall not be eligible to participate in any reallocation of SAE funds under §235.5(d) of this part during any fiscal year in which such sanction is being applied.

(c) *Termination for convenience.* FCS and the State agency may terminate the State agency's participation under this part in whole, or in part, when both parties agree that continuation would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. FCS shall allow full credit to the State agency for the Federal share of the noncancellable obligations, properly incurred by the State agency prior to termination.

(d) In taking any action under paragraphs (b) or (c) of this section, FCS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015 subpart N concerning grant suspension, termination and closeout procedures.

(e) *State requirements.* Nothing contained in this part shall prevent a

State agency from imposing additional operating requirements which are not inconsistent with the provisions of this part.

(f) *Administrative review process.* When FCS asserts a sanction against a State agency under the provisions of paragraph (b) of this section, the State agency may appeal the case and be afforded a review by an FCS Administrative Review Officer of the record including any additional written submissions prepared by the State agency.

(1) FCS shall provide a written notice and shall ensure the receipt of such notice when asserting a sanction against a State agency.

(2) A State agency aggrieved by a sanction asserted against it may file a written request with the Director, Administrative Review Staff, U.S. Department of Agriculture, Food and Consumer Service, 3101 Park Center Drive, Alexandria, Va. 22302 for a review of the record. Such request must be postmarked within 30 calendar days of the date of delivery of the sanction notice and the envelope containing the request shall be prominently marked "REQUEST FOR REVIEW." If the State agency does not request a review within 30 calendar days of the date of delivery of the sanction notice, the administrative decision on the sanction shall be final.

(3) Upon receipt of a request for review, FCS shall promptly provide the State agency with a written acknowledgment of the request. The acknowledgment shall include the name and address of the FCS Administrative Review Officer reviewing the sanction. The acknowledgment shall also notify the State agency that any additional information in support of its position must be submitted within 30 calendar days of the receipt of the acknowledgment.

(4) When a review is requested, the FCS Administrative Review Officer shall review all available information and shall make a final determination within 45 calendar days after receipt of the State agency's additional information. The final determination shall take effect upon delivery of the written notice of this final decision to the State agency.

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(5) The final determination of the FCS Administrative Review Officer will be the Department's final decision in the case and will not be subject to reconsideration.

(Sec. 14, Pub. L. 95-166, 91 Stat. 1338 (42 U.S.C. 1776); sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776); secs. 805 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1773); sec. 7(a), Pub. L. 95-627, 93 Stat. 3622, 42 U.S.C. 1751)

[41 FR 32405, Aug. 3, 1976, as amended at 44 FR 48958, Aug. 21, 1979; Amdt. 6, 47 FR 14135, Apr. 2, 1982; Amdt. 11, 48 FR 27892, June 17, 1983; Amdt. 12, 49 FR 18989, May 4, 1984; Amdt. 14, 51 FR 27152, July 30, 1986; Amdt. 15, 51 FR 33862, Sept. 24, 1986; Amdt. 17, 55 FR 1378, Jan. 16, 1990; 56 FR 32950, July 17, 1991; 60 FR 15463, Mar. 24, 1995]

§ 235.12 Information collection/record-keeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control number
235.3(b)	0584-0327
235.4 (d), (e)	0584-0319
235.7(a)	0584-0319
235.7(b)	0584-0341
235.7(c)	0584-0319
235.8 (a), (b)	0584-0319
235.9 (c), (d)	0584-0319
235.11(b)(2)	0584-0006
	0584-0002
	0584-0341
235.11(b)(5)(ii)	0584-0319
235.11(f)	0584-0319

[50 FR 53258, Dec. 31, 1985]

PART 240—CASH IN LIEU OF DONATED FOODS

Sec.

240.1 General purpose and scope.

240.2 Definitions.

240.3 Cash in lieu of donated foods for program schools.

240.4 Cash in lieu of donated foods for non-residential child and adult care institutions.

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240.6 Funds for States which have phased out facilities.

240.7 Payments to States.

240.8 Payments to program schools, service institutions, nonresidential child care institutions and commodity schools.

240.9 Use of funds.

240.10 Unobligated funds.

240.11 Records and reports.

AUTHORITY: 42 U.S.C. 612c note, 1751, 1755, 1762a, 1765, 1766, 1779.

SOURCE: 47 FR 15982, Apr. 13, 1982, unless otherwise noted.

§ 240.1 General purpose and scope.

(a) Each school year the Department programs agricultural commodities and other foods to States for delivery to program and commodity schools, nonresidential child care institutions, and service institutions pursuant to the regulations governing the donation of foods for use in the United States, its territories and possessions and areas under its jurisdiction (7 CFR part 250).

(b) Section 6(b) of the Act requires that not later than June 1 of each school year, the Secretary shall make an estimate of the value of the agricultural commodities and other foods that will be delivered during that school year for use in lunch programs by schools participating in the National School Lunch Program (7 CFR part 210). If this estimate is less than the total level of assistance authorized under section 6(e) of the Act the Secretary shall pay to the State administering agency not later than July 1 of that school year, an amount of funds equal to the difference between the value of donated foods as then programmed for that school year and the total level of assistance authorized under such section.

(c) Section 6(e)(1) of the Act requires:

(1) That for each school year, the total commodity assistance, or cash in lieu thereof, available to each State for the National School Lunch Program shall be the amount obtained by multiplying the national average value of donated foods, described in paragraph (c)(2) of this section, by the number of lunches served in that State in the preceding school year; and

(2) That the national average value of foods donated to schools participating in the National School Lunch Program, or cash payments made in lieu thereof, shall be 11 cents, adjusted on July 1, 1982, and each July 1 thereafter to reflect changes in the Price Index for Food Used in Schools and Institutions. Section 6(e)(1) further requires that not less than 75 percent of the assistance under that section shall be in the form